



APPENDIX A3
Attorney General Opinion #5890





CITIES: Placement of court fees in special fund for construction of court facility.

COURTS, DISTRICT: Provision of a district court facility

A city comprising the entire territory of a district court may establish a special fund for the purpose of constructing a district court facility and may deposit into such fund revenues received from the district court relating to warrant service fees, court costs, interest on bail deposit bonds, and service fees derived from bail bonds.

Opinion No. 5890 - April 30, 1981

Honorable Alfred A. Sheridan
State Representative
The Capitol
Lansing, Michigan

You have asked for my opinion as to the following question relating to a city's funding of a district court facility:

May the City of Taylor place into a special fund that revenue it receives from the Twenty-Third District of the district Court from warrant fees assessed when a bench warrant must be issued, court costs assessed on traffic violations, interest received on bail bond deposits and service fees retained on bail bonds, so that those sources of revenue may be used to finance a district court facility in a district of the third class?

The establishment and operation of the district court is provided for by the Revised Judicature Act of 1961, 1961 PA 236, as amended; ch 81 *et seq*; MCLA 600.8101 *et seq*; MSA 27A.8101 *et seq*; 1961 PA 236, *supra*, §8101(1) establishes the State's district court:

"A district court is established in the state. The district court is a court of record. The state is divided into judicial districts of the district court each of which is an administrative unit subject to the superintending control of the supreme court."

Under 1961 PA 236, *supra*, §§8121(8) and 9938, the Twenty-Third District consists of the City of Taylor, is a district of the third class, and has two judges. A district of the third class is defined in 1961 PA 236, *supra*, §8103(3), as follows:

"...[A] district consisting of or more political subdivisions within a county and in which *each political subdivision comprising the district is responsible for maintaining, financing and operating the district court within its respective political subdivision* except as otherwise provided in this act." [Emphasis added.]

Similarly, according to 1961 PA 236, *supra* § 8261, court facilities are to be provided as follows:

"Court facilities shall be provided at those places where the court sits... [In districts of the third class they *shall be provided by each political subdivision where the court sits.*" [Emphasis added.]

These provisions indicate that it is the responsibility of the City of Taylor as the only political subdivision in the Twenty-Third District to provide court facilities for the Twenty-Third District Court. While rental of the facilities is specifically authorized in 1961 PA 236, *supra*, §8263, it is apparent from the language of these provisions that the City of Taylor is authorized to use any reasonable means to accomplish that end, including construction or purchase of the necessary facilities.



Cities are expressly authorized to establish building funds by 1943 PA 177, as amended; MCLA 141.261 *et seq*; MSA 5.2770(1) *et seq*, which provides in pertinent part:

“Sec. 1. The legislative or governing body of *any political subdivision is hereby authorized* and empowered *to create* and establish a *fund* or funds for the purpose of appropriating, providing for, setting aside and accumulating moneys *to be used for* acquiring, constructing, extending, altering, repairing or equipping public improvements or *public buildings*, which said political subdivision may by the provisions of its charter or the general law be authorized to acquire, construct, extend, alter, enlarge, equip or repair.

“Sec. 2. Notwithstanding the provisions of any law or the charter of any city or village, moneys accumulated in said fund shall not be transferred, encumbered or otherwise disposed of, except for the purpose of acquiring, constructing, extending, altering, repairing or equipping public improvements or public buildings, which a political subdivision may by the provisions of its charter or the general law be authorized to acquire, construct, extend, alter, repair or equip....

“Sec. 3. The legislative or governing body of *any political subdivision may allocate to said fund miscellaneous revenues received and credited to the general fund*, including revenues received by said political subdivision under the provisions of Act No. 155 of the Public Acts of 1937, as amended, being sections 211.351 to 211.364, inclusive,, of the Compiled Laws of 1948, and also revenues received from the sale of lands owned by the political subdivision and which are no longer needed for public purposes, if said revenues are not otherwise pledged or encumbered for other purposes.

“Sec. 5. This act shall be in addition to all powers heretofore granted to political subdivisions by state law, or by any charter thereof.

“The term ‘political subdivision’ as used in this act shall be construed to mean any county, city, village, township, school district or other local unit of this state.” [Emphasis added.]

An extensive discussion of the legislative history, and prior opinions of the Attorney General, regarding 1943 PA 177, *supra*, is found in OAG, 1963-1964, No 4337, p 527 (December 17, 1964), which considered the power of a county to establish a building fund and to place unencumbered and unpledged *nontax* revenue within such fund.

The use of special funds in accordance with state law and pursuant to the determination of the city council is recognized by the Taylor Charter, ch V, § 5.6, which provides in pertinent part:

“The City Treasurer shall be the tax collector and shall perform all of the duties as prescribed by this Charter, the general laws of the State, together with such other duties as may be required by the Council or assigned to him.

“(d) He shall keep and deposit all moneys or funds in such manner and in such places as the Council may determine from time to time and shall report the same in detail to the Clerk:

“(g) He shall collect and keep an account of and be charged with all taxes and moneys appropriated, raised or received for *each fund of the City*, and shall keep a separate account of such fund, and shall credit thereto all moneys raised, paid in or appropriated therefor, and shall pay every warrant out of the particular fund raised for the purpose for which the warrant was issued.” [Emphasis added.]

In light of the statutory and charter authority discussed above, it is my opinion that a special fund may be created by the City of Taylor with the specified purpose of providing district court facilities.



Your question also lists four possible sources of revenue to be deposited by the City of Taylor in a special fund for the building of court facilities. Each of these sources of revenue will be considered in turn.

The fee for service of a civil bench warrant is set forth in 1961 PA 236, *supra*, §8326(i)(p). However, that act does not specify the disposition of such warrant fees. Your reference to warrant fees appears to be related to 1949 PA 300, as amended; MCLA 257.1 *et seq*; MSA 9.1801 *et seq*, which provides for the assessment of additional costs of compelling the appearance of any person who fails to appear after receiving a citation for a driving infraction as follows:

“Sec. 729. Upon failure of a person to appear before a magistrate as provided in this chapter, the magistrate shall notify the secretary of state upon forms prescribed by the secretary of state who shall not issue a new license to the person during the person’s default to appear and answer the civil infraction. In addition to a fine assessed for the charge or civil infraction when found guilty or determined responsible, the magistrate may also add to any fine and costs levied additional costs incurred in compelling the appearance of the person, *which additional costs shall be returned to the general fund of the unit of government incurring the costs.*” [Emphasis added.]

It is my opinion that warrant fees, to the extent that they are additional costs referred to in 1949 PA 300, § 729, *supra*, may be transferred from the city’s general fund to a special court building fund.

As to court costs assessed on traffic violations, 1961 PA 236, *supra*, § 8379, indicates that such costs shall be paid to the treasurer of the local subdivision as follows:

“Fines and costs assessed in the district court shall be paid to the clerk of the court who shall appropriate them as follows:

“(b)...In districts of the third class, costs imposed for the violation of a penal law of this state or ordered in a civil infraction action for the violation of a law of this state shall be paid to the treasurer of the political subdivision where the guilty plea or civil infraction admission was entered or where the trial or civil infraction action hearing took place.

“(c)...In districts of the third class, all. .costs, other than those imposed for the violation of a penal law of this state or ordered in a civil infraction action for the violation of a law of this state, shall be paid to the political subdivision whose law was violated.

As these court costs are to be directly paid to the political subdivision entitled to them as set forth in 1961 PA 236, §8379, *supra*, without further statutory instruction as to their use, it is my opinion that such funds may be placed by that political subdivision in a special fund for the construction of court facilities.

As to interest received on bail bond money invested in money market certificates, the procedures for such investments are outlined in 1927 PA 175, ch V, § 17, as amended; MCLA 765.17; MSA 28.904, which provides:

“Any cash or securities received by any treasurer or clerk under the provisions of this chapter shall be deposited in a special fund, or place of deposit subject to the order of the proper court. *Any interest accumulating upon such fund shall be paid into the general fund or corresponding fund of the state, county, city, village or township according to the nature of the case or in accordance with the order of the proper court.* When bonds or other securities are deposited the interest coupons shall not be detached therefrom but shall follow the disposition of the securities.” [Emphasis added.]

As the interest on such bail bond deposits may accrue to the general fund of the municipality designated by the court, it is my opinion that such interest which is earned pursuant to this section by the



City of Taylor and then deposited in its general fund would be available for transfer to a special fund designated for the construction of court facilities.

The final source of revenue to which you refer concerns service fees retained on bail bonds. The provision for such service fees is found in 1966 PA 257, § 6(6); MCL0A 780.66(6); MSA 28.872(56)(6), which states:

"When the conditions of the bail bond have been performed and the accused has been discharged from all obligations in the cause *the clerk of the court shall return to the accused 90% of the sum which had been deposited and shall retain as bail bond costs 10% of the amount deposited*, except that, if the accused has not been convicted of the charge, the entire sum deposited shall be returned to the accused." [Emphasis added.]

Under 1966 PA 257, §6(6), *supra*, the clerk of the court retains 10 percent of the deposited amount as bail bond costs. Those costs would be turned over to the treasurer of the City of Taylor pursuant to 1961 PA 236, § 8379, *supra*, which provides for the disposition of all court costs. Accordingly, it is my opinion that the City of Taylor may deposit such service fees on bail bonds in a special fund for the construction of court facilities.

In summary, it is my opinion that the City of Taylor in discharging its responsibility for providing court facilities for the Twenty-Third District Court may create a special fund to be used specifically for the construction of a district court facility and that the City of Taylor may deposit into that fund such revenues which it may receive from district court relating to warrant service fees, court costs, interest on bail bond deposits, and service fees derived from bail bonds.

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Attorney General.